

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

RICHARD DIAB,

Plaintiff,

v.

Civ. No. 16-1002 MCA/GJF

JOHN DOE, NEW MEXICO DEPARTMENT
OF CORRECTIONS, FNU BACA, KEN
SMITH,

Defendants.

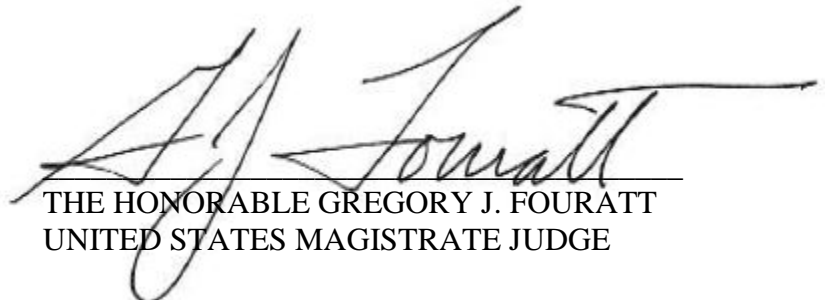
SECOND ORDER TO CURE DEFICIENCY

THIS MATTER is before the Court on Plaintiff's responses to the Court's Order to Cure Deficiency. [ECF No. 3] On September 8, 2016, the Court ordered Plaintiff to cure his Application to Proceed in District Court Without Prepaying Fees or Costs by submitting an amended application "that is sworn under penalty of perjury and a certified copy of his inmate account statement for the 6-month period immediately preceding the filing of his civil rights complaint." [ECF No. 3] In response, Plaintiff submitted a Prisoner's Motion and Affidavit For Leave to Proceed Pursuant to 28 U.S.C. § 1915 [ECF No. 8], which was sworn under penalty of perjury, followed by an Application To Proceed In District Court Without Prepaying Fees or Costs (Short Form), which was also sworn under penalty of perjury. [ECF No. 12] Additionally, Plaintiff submitted a Motion to Enter Document [ECF No. 9], asking the Court to accept his motions to *proceed in forma pauperis* under 28 U.S.C. § 1915, even though they were filed "without the notary seal." Because Plaintiff's motions to proceed *in forma pauperis* [ECF Nos. 8, 12] were sworn under penalty of perjury, they will be accepted by the Court. Therefore, Plaintiff's Motion to Enter Document [ECF No. 9] will be granted.

Nonetheless, Plaintiff has not complied with the Court's September 8, 2016 Order to Cure Deficiency, because he has not submitted "a certified copy of his inmate account statement for the 6-month period immediately preceding the filing of his civil rights complaint." [ECF No. 3] Plaintiff has submitted a copy of his inmate account statement for the time period between September 1, 2016 and September 20, 2016, but this is insufficient. [See ECF No. 10 and ECF No. 12 at 4] Title 28 of the United States Code, Section 1915(a)(2) requires Plaintiff to "submit a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner **for the 6-month period immediately preceding the filing of the complaint** . . . obtained from the appropriate official of each prison at which the prisoner is or was confined." 28 U.S.C. § 1915(a)(2) (emphasis added). Therefore, the Court will order Plaintiff to submit a certified copy of his inmate account statement, which includes **the six-month time period immediately preceding the filing of his civil rights complaint on September 7, 2016**. Failure to cure this deficiency within thirty (30) days from entry of this Order may result in the dismissal of this action without further notice.

IT IS THEREFORE ORDERED that Plaintiff's Motion to Enter Document [ECF No. 9] is **GRANTED**;

IT IS FURTHER ORDERED that, within **thirty (30) days** from entry of this Order, Plaintiff submit a certified copy of his inmate account statement for the six-month period immediately preceding the filing of his civil rights complaint.



THE HONORABLE GREGORY J. FOURATT
UNITED STATES MAGISTRATE JUDGE